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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 899

MELVIN W. BECK

APPELLANT

vs.

STATE OF MAINE

APPELLEE

ON APPEAL FROM

THE SUPREME JUDICIAL COURT

OF THE STATE OF MAINE

MOTION TO DISMISS

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Appellee ~~Appellant~~ in the above entitled case moves to dismiss on the grounds that the questions presented are so unsubstantial as not to warrant further argument.

ARGUMENT

I. *The Statutory Prohibition on use of the Title "Architect" by Unlicensed Persons is not Constitutionally Vague.*

Appellant challenges that portion of the Maine statute requiring registration of architects which defines the practice of architecture asserting that it is unconstitutionally vague. Such challenge widely misses the mark, however, since no issue as to the clarity of the statutory definition of architecture is involved in the decision of this case.

Appellant's conviction below was on the narrow ground that he advertised himself as an architect in violation of the statutory requirement that "no person shall . . . use the title 'architect' . . . unless he shall be duly registered by the board." Me. Rev. Stat. c. 81, sec. 8 (1954). Appellant was admittedly not so registered. This quoted language clearly informed him that such conduct was forbidden.

Had appellant been convicted of practicing architecture in defiance of the statute, he would then have had standing to assert that the statutory language defining the practice of architecture failed to spell out clearly what types of conduct are forbidden. Instead he was merely charged with improperly using the title "architect."

II. *The Exceptions to the Statutory Licensing Requirement Are Consistent with its General Legislative Purpose.*

Appellant attacks the statute because it excepts from its licensing provisions certain classes of persons, primarily those who perform services related to architecture without charge or who perform such services for their own employers. Presumably his argument is that the difference in classes has no appropriate relation to the object of the legislation.

Ample grounds exist, however, to support an opposite conclusion. The legislature could reasonably have concluded that its purpose of assuring to the public the competence of persons advertising themselves as architects would not be subverted by permitting non-architects to provide gratuitous assistance to their neighbors in their home building projects or perform incidental architectural or construction work for their own employers. In neither case is the recipient of these services misled as to the knowledge and skill of the person performing them. Furthermore, this court has heretofore acknowledged that the legislature may constitutionally distinguish between those who act for hire and those who do not. *Railway Express Agency v. People of New York*, 336 U. S. 106, 115-116 (1949) (concurring opinion of Mr. Justice Jackson).

III. *The Supreme Court Will Not Review A State Court's Interpretation of A State Statute.*

In his third, fourth, and fifth questions presented, appellant declares himself aggrieved by the Maine Supreme Court's interpretation of the statute under which he was convicted. In numerous decisions this court has held that it will not review state court determinations of the proper meaning to be given to state law. See e.g. *Williams v. Kaiser*, 323 U. S. 471 (1944); *Smith v. O'Grady*, 312 U. S. 329 (1940).

IV. *Appellant's Rights Were Not Prejudiced by Citation in the State's Brief of Publications Relating to the Education of Architects.*

In his sixth question presented, appellant complains that the State obtained a prejudicial advantage by introducing evidential material at the time of the oral argument in the court below. The "source materials" referred to by appellant were merely three articles or brochures which had been quoted in the State's brief. These documents were submitted to the court, as a matter of its own convenience, to assist it in verifying the quotations used.

Appellant's objection that these materials contained matters of fact which he had no opportunity to rebut is without merit. Whether the differences between architects and engineers described in the quotations are beyond debate is not at issue. It is enough to show that responsible opinion *exists* that there are such differences which the legislature could reasonably have adopted as a basis for its licensing statute. *Clark v. Paul Gray, Inc.*, 306 U. S. 583, 594 (1939). For this purpose, use of the materials in question was clearly appropriate.

In any event, the acceptance of such materials and the weight to be given them would appear to be matters within the sound discretion of the state court. Appeals from such decisions clearly do not present a substantial federal question.

V. *The Statutory Restriction on the Use of the Title "Architect" Does Not Unconstitutionally Discriminate Against Professional Engineers.*

The court below stated its grounds for upholding the constitutionality of the statutory requirement that unlicensed persons may not use the title "architect" in the following terms:

> (The statute) is necessary to assure the public in these times of expanding and mobile populations that one who publicly offers himself in the role of an architect may evidence his competence by due registration with the State Board. Appellant's Jurisdictional Statement, App. A., pp. 18-19.

Stated another way — the legislature's police power to protect the general welfare includes power to pass laws designed to prevent fraud and financial loss to individuals from dealings with incompetent persons posing as specialists, and to create public confidence in the

qualifications of men holding themselves out as members of recognized professions or other occupations requiring high degrees of knowledge and skill. (A discussion of the factors which have given rise to an increasing number of such licensing laws in modern times may be found in an annotation in 34 A.L.R.2d at 1326.)

This court has recognized the constitutionality of such police power regulation. See e.g. *Hall v. Geiger-Jones Co.*, 242 U. S. 539 (1917) (licensing of dealers in securities).

The Maine Court carefully considered the professional requirements of both architects and engineers and held that the legislature could reasonably have concluded that there were significant differences in the two warranting separate classification. Thus the court correctly applied the rule that no unequal protection of the law exists where the distinction is based upon an actual difference in the classes bearing a substantial relation to the purpose which the statute was designed to accomplish. *Railway Express Agency v. People of New York*, 336 U. S. 106 (1949); *New York Rapid Transit Corp. v. City of New York*, 303 U. S. 573 (1938).

It is significant to note that in three state court cases in which the constitutionality of the separate classification of architects and engineers was at issue, the legislation was upheld. See *Heron v. City of Denver*, 131 Colo. 501, 283 P.2d 647 (1955); *State v. Babcock*, 343 Mich. 671, 73 N.W.2d 321 (1955); *Goldschlag v. Deegan* 135 Misc. 535, 238 N.Y.S. 3 (1929). In the *Goldschlag* case, this court denied certiorari, 282 U. S. 876 (1930), indicating that, under criteria similar to those to be applied here, no issue meriting review was presented.

CONCLUSION

For the reasons given, appellee submits that no substantial federal question is raised by appellant, and that the motion to dismiss should be granted.

Respectfully submitted,

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